

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority to pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Implementation of orders.

(a) In each case the Board shall transmit a copy of its decision or the Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish to the Board or to the Coast Guard any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject to setoff in the amount of any existing indebtedness to the Government arising from Coast Guard service and to other setoffs required by law or regulation.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard, if the Coast Guard believes that executing all or part of the order in the final decision is beyond the Coast

Guard's authority, or if the Coast Guard believes that the order is incomplete because of an oversight, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Public Access to Decisions

§ 52.81 Reading room and index.

After deleting only so much personal information as is necessary to prevent an unwarranted invasion of privacy of the applicant or other persons mentioned in the final decision of the Board, a redacted copy of each final decision shall be indexed by subject and made available for review and copying at a public reading room. Final decisions created on or after November 1, 1996, shall be made available by electronic means. 5 U.S.C. 552.

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

Sec.

53.1 Purpose.

53.3 Applicability.

53.5 Definitions.

53.7 Requirements.

53.9 Responsibilities.

53.11 Procedures.

AUTHORITY: 10 U.S.C. 1034; Pub. L. 100-456, 102 Stat. 1918; Pub. L. 101-225, 103 Stat. 1908; Pub. L. 107-296, 116 Stat. 2135.

SOURCE: 56 FR 13405, Apr. 2, 1991, unless otherwise noted.

§ 53.1 Purpose.

This part:

(a) Establishes policy and implements section 1034 of title 10 of the United States Code to provide protection against reprisal to members of the Coast Guard for making a protected communication to a Member of Congress; an Inspector General; a member

§ 53.3

33 CFR Ch. I (7–1–13 Edition)

of a Department of Defense or Department of Homeland Security audit, inspection, investigation, or law enforcement organization (*e.g.*, the Coast Guard Investigative Service); any person or organization in the chain of command; and any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

(b) Assigns responsibilities and delegates authority for such protection and prescribes operating procedures.

[56 FR 13405, Apr. 2, 1991, as amended by USCG–2009–0239, 75 FR 79959, Dec. 21, 2010]

§ 53.3 Applicability.

This part applies to members of the United States Coast Guard, the Board for Correction of Military Records of the Coast Guard, and the Department of Homeland Security's Office of the Inspector General.

[56 FR 13405, Apr. 2, 1991, as amended by USCG–2003–14505, 68 FR 9535, Feb. 28, 2003]

§ 53.5 Definitions.

As used in this part, the following terms shall have the meaning stated, except as otherwise provided:

Board for Correction of Military Records of the Coast Guard. The Department of Homeland Security Board for Correction of Military Records of the Coast Guard (Board) is empowered under 10 U.S.C. 1552 to make corrections of Coast Guard military records. The Board is part of the Office of the General Counsel in the Office of the Secretary of Homeland Security.

Chain of Command. The succession of commanding officers from a superior to a subordinate through which command is exercised; and the succession of officers, enlisted members, or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

Corrective Action. Any action deemed necessary to make the complainant whole, changes in agency regulations or practices, and/or administrative or disciplinary action against offending personnel, or referral to the U.S. Attorney General or courtmartial convening authority of any evidence of criminal violation.

Inspector General. The Inspector General in the Office of Inspector General of the Department of Homeland Security, or any other Inspector General, as appointed under the Inspector General Act of 1978.

Judge Advocate. A commissioned officer of the Coast Guard designated for the special duty of law.

Member of the Coast Guard. Any past or present Coast Guard uniformed personnel, officer or enlisted, regular or reserve. This definition includes cadets of the Coast Guard Academy.

Member of Congress. In addition to a Representative or a Senator, the term includes any Delegate or Resident Commissioner to Congress.

Personnel Action. Any action taken regarding a member of the Coast Guard that adversely affects or has the potential to adversely affect the member's position or his or her career. Such actions include, but are not limited to, a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; or a decision concerning a promotion, pay, benefits, awards, or training.

Protected Communication. Any lawful communication to a Member of Congress or an Inspector General; or a communication in which a member of the Coast Guard communicates information that the member reasonably believes evidences a violation of law or regulation (including sexual harassment or discrimination), gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following: A Member of Congress; an Inspector General; a member of a Department of Defense or Department of Homeland Security audit, inspection, investigation, or law enforcement organization (*e.g.*, the Coast Guard Investigative Service); any person or organization in the chain of command; and any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.

Reprisal. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action,

Coast Guard, DHS

§ 53.9

against a member of the Coast Guard for making or preparing to make a protected communication.

Secretary. The Secretary of Homeland Security or his or her delegate.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2003-14505, 68 FR 9535, Feb. 28, 2003; USCG-2009-0239, 75 FR 79959, Dec. 21, 2010]

§ 53.7 Requirements.

(a) No person within the Department of Homeland Security may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.

(b) A member of the Coast Guard shall be free from reprisal for making or preparing to make a protected communication.

(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or preparing to make a protected communication.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2003-14505, 68 FR 9535, Feb. 28, 2003; USCG-2009-0239, 75 FR 79959, Dec. 21, 2010]

§ 53.9 Responsibilities.

(a) The Inspector General, Department of Homeland Security shall:

(1) Expeditiously determine whether there is sufficient evidence to warrant an investigation of an allegation that a personnel action has been taken, withheld, or threatened in reprisal for making or preparing to make a protected communication. No investigation is required when such allegation is submitted more than 60 days after the Coast Guard member became aware of the personnel action that is the subject of the allegation.

(2) If such investigation is warranted, initiate a separate investigation of the information the Coast Guard member reasonably believes evidences wrongdoing if a prior investigation has not already been initiated, or if the prior investigation was biased or inadequate.

(3) Complete the investigation of the allegation of reprisal and issue a report not later than 180 days after receipt of

the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The Inspector General may forward a recommendation as to the disposition of the complaint.

(4) Submit a copy of the investigation report to the Secretary of the Department of Homeland Security and to the Coast Guard member making the allegation not later than 30 days after the completion of the investigation. In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under 5 U.S.C. 552. However, the copy transmitted to the member need not contain summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(5) If a determination is made that the report cannot be issued within 180 days of receipt of the allegation, notify the Secretary and the Coast Guard member making the allegation of the reasons why the report will not be submitted within that time, and state when the report will be submitted.

(6) At the request of the Board, submit a copy of the investigative report to the Board.

(b) The Board shall, in accordance with its regulations (33 CFR part 52):

(1) Consider under 10 U.S.C. 1552 and 33 CFR part 52 an application for the correction of records made by a Coast Guard member who has filed a timely complaint with the Inspector General alleging that a personnel action was taken in reprisal for making or preparing to make a protected communication. This may include oral argument, examining and cross-examining

witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation by the Inspector General into the Coast Guard member's allegation of reprisal.

(3) As deemed necessary, request the Inspector General to gather further evidence and issue a further report to the Board.

(4) Issue a final decision concerning the application for the correction of military records under this part not later than 180 days after receipt of a complete application.

(c) If the Board elects to hold an administrative hearing, the Coast Guard member may be represented by a Judge Advocate if:

(1) The Inspector General, in the report of the investigation, finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the Coast Guard member making or preparing to make a protected communication;

(2) The Chief Counsel of the Coast Guard (who may also be serving as the Judge Advocate General of the Coast Guard) determines that the case is unusually complex or otherwise requires the assistance of a Judge Advocate to ensure proper presentation of the legal issues in the case; and

(3) The Coast Guard member is not represented by outside counsel chosen by the member.

(d) If the Board elects to hold an administrative hearing, the Board must ensure that the Coast Guard member may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence in the Inspector General investigatory record but not included in the report released to the member.

(e) If the Board determines that a personnel action was taken, withheld, or threatened as a reprisal for a Coast Guard member making or preparing to make a protected communication, the Board may forward its recommendation to the Secretary of the Department of Homeland Security for appropriate administrative or disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as a

reprisal, and direct any appropriate correction of the member's records.

(f) The Board shall notify the Inspector General of the Board's decision concerning an application for the correction of military records of a Coast Guard member who alleged reprisal for making or preparing to make a protected communication, and of any recommendation to the Secretary of the Department of Homeland Security for appropriate administrative or disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as a reprisal.

(g) When reprisal is found, the Secretary shall ensure that appropriate corrective action is taken.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2003-14505, 68 FR 9535, Feb. 28, 2003; USCG-2009-0239, 75 FR 79960, Dec. 21, 2010]

§ 53.11 Procedures.

(a) Any member of the Coast Guard who reasonably believes a personnel action was taken, withheld, or threatened in reprisal for making or preparing to make a protected communication may file a complaint with the Department of Homeland Security Inspector General Hotline at 1-800-323-8603. Such a complaint may be filed: By letter addressed to the Department of Homeland Security, Office of Inspector General, Hotline, Washington, DC 20528; By faxing the complaint to 202-254-4292; or by e-mailing DHSOIGHOTLINE@dhs.gov.

(b) The complaint should include the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, withheld, or threatened that is alleged to be motivated by reprisal; the name(s) of the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; and any information that suggests or evidences a connection between the protected communication and reprisal. The complaint should also include a description of the protected communication, including a copy of any written communication and a brief summary of any oral communication showing the date of communication, the subject matter,

Coast Guard, DHS

§ 54.05

and the name of the person or official to whom the communication was made.

(c) A member of the Coast Guard who alleges reprisal for making or preparing to make a protected communication may submit an application for the correction of military records to the Board, in accordance with regulations governing the Board. See 33 CFR part 52.

(d) An application submitted under paragraph (c) of this section shall be considered in accordance with regulations governing the Board. See 33 CFR part 52.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2009-0239, 75 FR 79960, Dec. 21, 2010]

PART 54—ALLOTMENTS FROM ACTIVE DUTY PAY FOR CERTAIN SUPPORT OBLIGATIONS

Sec.

54.01 Purpose.

54.03 Persons authorized to give notices.

54.05 Form and contents of notice.

54.07 Service of notice upon designated Coast Guard official.

AUTHORITY: 42 U.S.C. 665(c).

SOURCE: CGD 82-109, 48 FR 4285, Jan. 31, 1983, unless otherwise noted.

§ 54.01 Purpose.

This part prescribes procedures for State officials to notify the Coast Guard that a member on active duty is delinquent in meeting an obligation for child support alone, or both child and spousal support, in an amount equal to the support payable for two months or longer. Under 42 U.S.C. 665, an allotment may be taken from the pay and allowances of the member in this situation.

§ 54.03 Persons authorized to give notices.

For the purpose of instituting an allotment under this part, notice that a Coast Guard member is delinquent in meeting support obligations may be given by:

(a) Any agent or attorney of any State having in effect a plan approved under Part D of Title IV of the Social Security Act (42 U.S.C. 651-664), who has the duty or authority to seek recovery of any amounts owed as child or

child and spousal support, including any official of a political subdivision when authorized under a State plan.

(b) The court that has authority to issue an order against the member for the support and maintenance of a child, or any agent of that court.

§ 54.05 Form and contents of notice.

(a) The notice required to institute an allotment under this part must be given in the form of a court order, letters, or other document issued by a person specified in § 54.03.

(b) The notice must:

(1) Provide the full name, social security number, and duty station of the member who owes the support obligation;

(2) Specify the amount of support due, and the period in which it has remained owing;

(3) Be accompanied by a certified copy of an order directing the payment of this support issued:

(i) By a court of competent jurisdiction, or;

(ii) In accordance with an administrative procedure which is established by State law, affords substantial due process, and is subject to judicial review;

(4) Provide the full name, social security number, and mailing address of the person to whom the allotment is to be paid;

(5) Identify the period in which the allotment is to remain in effect; and

(6) Identify the name and birth date of all children for whom support is to be provided under the allotment.

(c) Each notice must be accompanied by the following information:

(1) For each administrative order, a copy of all provisions of state law governing its issuance.

(2) For each court order and for each administrative order, if not stated in the support order:

(i) An explanation as to how personal jurisdiction was obtained over the member; and

(ii) A statement on the age of majority in the state law, with appropriate legal citations.